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MANAGEMENT

PALACE HOTEL COMPANY

TAX PROBLEM
ON HALL ESTATEAttorneys Raise Question for
First Time in This
Territory.For the first time in the legal history
of the Territory of Hawaii, the
question as to whether the inheritance
tax is collectible on stocks of a Ha-
waiian corporation, the holder of which
has died abroad, has been raised for
determination through a brief that has
been filed by Attorneys Holmes, Stan-
ley & Oleson, in connection with the es-
tate of Mary Dame Hall. The docu-
ment is filed in behalf of the ancillary
administrator, and the point raised
covers approximately \$200,000 worth of
stock held by Mrs. Hall in E. O. Hall
& Son, Ltd., the inheritance tax on
which would be about \$5600.The question will be submitted to
Judge Robinson on brief and will un-
doubtedly be carried to the Supreme
Court for final determination. Attor-
ney-General Hemenway does not be-
lieve there is the slightest ground for
the contention raised, questioning the
application of the inheritance tax in
this instance. He has marshaled an
array of authorities that sustain his po-
sition and believes that it will be sus-
tained.In the course of the brief filed yes-
terday, the counsel for the ancillary
administrator deals with the question
in general terms, and insist that the
tax can not be imposed under the pro-
vision of the Territorial statute. The
points raised are as follows:"The facts are simply that the de-
ceased died a nonresident of the Ter-
ritory of Hawaii leaving shares of
stock in corporations existing under the
laws of the Territory of Hawaii. The
question is whether or not an inher-
itance tax is chargeable on account of
these shares of stock under Act 102 of
the Session Laws of 1905."Section 1 of that Act designates
specifically the scope of the Territorial
inheritance tax law, in the following
language:"I. All property which shall pass by
will or by the intestate laws of this
Territory, from any person who may
die seized or possessed of the same
while a resident of this Territory."II. Or which, being within this
Territory, shall so pass from any per-
son who may so die while not a resi-
dent of this Territory."The facts here clearly do not con-
cern the first part of the quotation
since the deceased did not die 'while
a resident of this Territory.'"As the deceased died while not a
resident of this Territory, and as the
only property for such a nonresident
designated as subject to the inheritance
tax is property 'which, being within
this Territory, shall so pass,' the ques-
tion is simply whether or not these
shares of stock are property which was
'within this Territory' at the time of
the death of the deceased."We are therefore not concerned
with the question of whether or not the
Territory could, as a matter of law,
pass a valid statute imposing an in-
heritance tax upon the passing of
shares of stock in domestic corporations
upon the death of the nonresident ow-
ners thereof. The question is: Has it
done so when the statute expressly
limits the tax upon property of non-
residents to such property as is 'with-
in this Territory'?"

Hold It Inapplicable.

"That question, we believe, admits
of but one answer—the negative."Shares of corporate stock are
chosen in action only. No one claims at
this day of legal history that a share
of corporate stock gives the holder
thereof any proprietary interest in the
assets of the corporation. The corpo-
ration is a distinct legal entity and
as such the legal owner of the corporate
assets. The shareholders of the corpo-
ration have simply incorporeal rights
against the corporation."It is also well settled that a cer-
tificate of stock is not the stock itself,
but merely the evidence of its owner-
ship."In other words, corporate shares of
stock are intangible and consequently
can have no physical situs whatever.
The right against the corporation, rep-
resented by these shares, necessarily
follows the person of the owner. It is
this right which passes to the heirs or
legatees upon the death of the
owner; and it is the passing of this
right which is taxable under the in-
heritance tax law if any tax is charge-
able on account of the shares of stock."But to be taxable under our statute
it must be found, since the owner in
this instance was a nonresident at the
time of her death, that the right was
'within this Territory.' This, we sub-
mit, from our analysis, can not be
found."It may be that in a special case,
where the laws governing the creation
of corporations expressly circumscribe
the issuance of shares of stock so as
to retain with the corporation the con-
trol over the same to a greater or less
extent, it might be said that the right
represented by the shares of stock ex-
ists with the corporation only, and,
therefore, an inheritance tax law such
as that in the Territory of Hawaii
would be applicable to such shares, al-
though owned by a nonresident."There is no such special feature in
our corporation laws, and, therefore,
the general rule as to the situs of cor-
porate shares should be applicable."We submit that it should be held
that no tax is chargeable in this case
under the inheritance tax law."

Supreme Court Decisions.

By a decision rendered yesterday,
the Territorial Supreme Court holds
that Section 1893 of the Revised Laws
is not unconstitutional and does not
imply the obligation of a contract by
requiring a plaintiff to pay the costs
when a judgment recovered by him
in the District Court is reduced one-fifth in the appellate court, although
the costs exceed the sum awarded him
for breach of the contract sued on.The question arose through the suit
that was brought by Thomas Carpen-
ter against H. L. Lawson. In the
course of its opinion the court says:"The plaintiff having obtained a
judgment for \$15 and costs in his ac-
tion in the District Court of Hono-
lulu for the use and hire of four
trestle horses, ten scaffolding planks,
one water barrel, one mortar board
and four mortar galvanized buckets
for fifteen days at \$15 a day, the de-
fendant appealed to the Circuit Court,
and, the parties waiving jury, the
judge found for the plaintiff in the
sum of \$7.50. The judgment appealed
from having thus been reduced more
than one-fifth, the costs (\$16.75) were
awarded under Section 1893, Revised
Laws, to the defendant, and under
Section 1894, Revised Laws, judgment
accordingly was entered, making a
balance of \$9.25 in favor of the de-
fendant, the plaintiff's counsel object-
ing on the ground that the sections
cited are in violation of Section 10, Ar-
ticle 1, of the Constitution in destroy-
ing his right to recover the \$7.50
awarded, and moving to set aside the
findings as contrary to law and not
supported by evidence. The objection
was overruled and the exception de-
nied, to which rulings the plaintiff
excepted."The decision further states that "the
statute is peremptory in requiring
costs to be awarded to the appellant
if the defendant against whom judg-
ment is rendered shall appeal and the
amount recovered in the court below
be reduced one-fifth or more." It is
also stated "that plaintiff's failure to
recover as much in the Circuit Court
as was awarded him by the District
Court, results from him having claim-
ed too large a sum in the first in-
stance."Carpen-ter has discovered that it is
possible to win a case technically and
still lose it financially.

Land Case Opinion.

The second decision handed down by
the Supreme Court yesterday was on
the appeal from a decision of the judge
of the land court denying the peti-
tion of J. B. Castle for a registered
title to a portion of land, which was
found to be vested in Helen Boyd. The
Supreme Court holds that an appeal
does not lie from a decision of the
Court of Land Registration, and in
the course of its opinion says:"No objection was made by counsel,
but at the argument the court of its
own motion questioned whether an
appeal lies from a decision as dis-
tinguished from a decree of the land
court, no decree having yet been en-
tered.""The statute was originally as fol-
lows: 'Appeals shall be allowed from
all decisions, judgments, orders or de-
crees of the Court of Land Registra-
tion to the Supreme Court in the same
manner as appeals are taken from the
decisions of circuit judges in cham-
bers.' R. L. Sec. 2407. This section
was amended by Act 43, Session Laws
1907, so as to read as follows: 'Ap-
peals solely upon points of law shall
be allowed from any final order, deci-
sion, judgment or decree of the court
to the Supreme Court.' With other
provisions not necessary to be re-
ferred to."

Notes of the Courts.

A stipulation was filed yesterday and
approved by Judge De Bait by which
the heirs of the late August Dreier
agree that the sum of \$14,650, paid by
the United States as the condemnation
price of the lots at Kalia, Waikiki,
be turned over to Attorneys Thompson
& Clemons for distribution. The docu-
ment bears the signatures of Emma
Dreier Markham, Adele Dreier, F. A.
Schaefer, executor, trustee and guard-
ian; M. F. Prosser, attorney for Mrs.
Emma Dreier; W. A. Kinney, guard-
ian ad litem of Emilie Dreier, and
Cecil Brown. The check for \$14,650
was released by Clerk Murphy of the
United States Court, yesterday, and
the case affecting the condemnation of
the Waikiki land for the use of the
Federal Government was brought to a
final conclusion.A deficiency judgment of \$3897.41 was
signed by Judge Robinson yesterday
in the proceedings for a foreclosure
of mortgage brought by Cecil Brown
and F. A. Schaefer against Elinor
White Langton. The return and ac-
count of sale of James Morgan, the
commissioner appointed to sell a lease-
hold for the satisfaction of the origi-
nal judgment, was approved, the
lease going for the sum of \$3500. The
judgment returned yesterday author-
izes execution for the amount of the
deficiency.A number of checks were paid out
yesterday by Clerk Murphy of the
United States District Court, and were
as follows: Joseph O. Carter et al.,
\$15,000; Elizabeth K. Pratt, \$100; F.
Nakafugi, \$1700; Mutual Telephone Co.,
\$225; Yukuta, \$150; Nakamura, \$400;
Wong Hung Wah, \$250; Haramoto,
\$350; Yoshida, \$700; Goo Ping, \$550;
Nakagawa, \$100; Yamada, \$300; Yama-
mura, \$1600; M. Tabara, \$250; Chong
Chung and Lai Sei, \$400; S. O. Fugita,
\$650; Bank of Hawaii, \$5675; K. Nai-
koko, \$1500; J. A. Magoon, \$1850; Ha-
waiian Electric Co., \$320; First Na-
tional Bank, \$6000; Seely I. Shaw, \$10,
475; Emma W. Dreier et al., \$14,650.There were dainty little rivulets
trickling down the walls of the ven-
erable Judiciary building yesterday.
Allioli Hale was in grievous need of
an appropriation to make it habit-
able, but the last Legislature could
not see its way clear to provide any
money for the rehabilitation of the
structure. Judge Whitney's courtroom
looked as though it might be a stray
portion of a Waikiki duck pond, and
there were large, gaping holes in the
plaster of the hallway—all the result
of the slight activity of Jupiter Plu-
vius in the early morning hours. It
is planned to have a supply of um-
brellas ready in the future for court
attendants and jurors.RELIEF FROM RHEUMATIC PAINS.
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ables the sufferer to sleep, which in
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